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**CHAD BILBREY**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff respectfully objects to the Declaration of Dennis J. Rhodes, Document 52-2 and the attached Exhibit 1, purporting to be copy of the long term disability insurance policy involved in this action.

The first ground for plaintiff's objection is that Mr. Rhodes' Declaration does not properly authenticate the purported Exhibit 1. While Mr. Rhodes is counsel of record in this lawsuit, and he

1 purports to state in Paragraph 1 at p. 2, ln. 3-4 that he has personal knowledge of the facts stated in  
 2 his Declaration, there are no facts actually stated that support the key factual statement, namely  
 3 that Exhibit 1 is the policy of insurance involved in this litigation. F.R.Ev. 901 (b)(1); 902.  
 4 Further, the unsigned document is hearsay. F.R.Ev. 802. Further, since it is not signed, it has no  
 relevance under F.R.Ev. 401, 402.

5 In order to lay an appropriate foundation to identify this document as the policy involved in  
 6 this litigation, Mr. Rhodes would need to set forth direct facts that he was a custodian of records of  
 7 this document, that he issued this document by Reliance, that he received this document on behalf  
 8 of one of the other defendants, or some other foundation that supports the statement that this is  
 indeed the policy which is involved in this action.

9 Mr. Rhodes does not make any such direct factual statements in Paragraph 2. He only  
 10 states that Exhibit 1 is a true and correct copy of Group Policy LSC 97200 that was produced in  
 11 the initial disclosures. However, initial disclosures under FRCP 26(a)(1)(A) are means of  
 12 discovery and not authentication for the purpose of evidentiary facts, nor do they resolve potential  
 13 hearsay issues.

14 The problems raised by Mr. Rhodes' Declaration, Exhibit 1, are exacerbated by the  
 15 document itself. At Exhibit 1, page AR 414, there is simply a generic front page for Policy LSC  
 16 97200, with an effective date of 1986, which does not pertain to this case, and purported  
 17 anniversary dates of January 1, 2004 and each January 1 thereafter. Accordingly, this raises an  
 18 inherent ambiguity as to whether the cover page AR 414 applies to the relevant policy at issue in  
 and of itself.

19 This is further complicated by page AR 416, where it states that as of January 1, 2003, the  
 20 "participating unit", namely LAM Research Corporation, purports to be approved as a participant  
 21 in the "RSL Group and Blanket Insurance Trust", which is neither an entity involved in this action,  
 22 nor has any explained connection with "Reliance Standard Life Insurance Company", the entity  
 identified at page AR 414.

23 Further, the "Request for Participation" at page AR 416, while apparently having some  
 24 signature (whether stamped or real unknown) by Reliance Standard Life, the signature lines for the  
 25 "Participating Unit", purportedly LAM Research Corporation, is totally blank. This raises the  
 26 serious evidentiary question as to whether a blank contract not signed by LAM can have any  
 27 evidentiary value or admissibility whatsoever.

Further, Exhibit 1 suffers from the lack of any authentication that it was actually produced to plaintiff pursuant to the requests made under the Regulations 29 CFR 2560.530-1, which are detailed in Paragraphs 38-42; 79-83 of the FAC.

Accordingly, Exhibit 1 to the Declaration of Dennis Rhodes should not be admitted in evidence and Paragraph 2 of Mr. Rhodes' Declaration should be stricken. The basis is that there is no evidentiary foundation to authenticate this document pursuant to F.R.Ev. 901, the document itself is not self-authenticating under F.R.Ev. 902, the unsigned document at pages AR 416 and 417, having no signature, could hardly be seen to be authenticated under any circumstances, which makes the document not relevant under F.R.Ev. 401, 402, and further, that the unsigned document is hearsay as being a blank form that is not signed by the purported participating unit, LAM Research Corporation. F.R.Ev. 801, 802.

Respectfully submitted,

Dated: February 22, 2010

ABRAHAM GOLDMAN & ASSOCIATES LTD.

By: /s/ Abraham N. Goldman  
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